## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ralf Keller § Group Art Unit: 2454

Application No. 10/595,473 § Examiner: Coulter, Kenneth R

Filed: October 27, 2006 § Confirmation No: 1188

Attorney Docket No: P18906-US1

Customer No.: 27045

Via EFS-Web

Mail Stop AF

P.O. Box 1450

For: Multi-user streaming

Commissioner for Patents

Alexandria, VA 22313-1450

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United Sates Postal Service will sufficient postage for First class or Express mail in an envelope addressed to Commissioner for Patents P. 80x 1450, Alexandria, VA 2231-31450, or being facsimile transmitted to the USPTO at (571) 273-8300 or being facsimile transmitted to the USPTO at 671, 273-8300 or being facsimile transmitte

Date: February 24, 2010

Name: Melissa Wingo

Petition under 37 C.F.R. §1.181, 1.182 to Withdraw a Holding of Abandonment

The Applicants hereby petition the Director to withdraw the Notice of Abandonment issued on November 24, 2009.

#### **FACTS**

- A Notice of Abandonment was issued by the Examiner on November 24, 2009, on the basis that Applicants had not filed a response to a Non Final Office Action mailed on 07 November 2008. (Exhibit A)
- 2.) Applicants never received a Non Final Office Action dated November 7, 2008.
- Upon receipt of the Notice of Abandonment, the Applicants checked PAIR and discovered that on November 17, 2008, the Non Final Office Action was "returned to USPTO as undelivered." (Exhibit B)

- Applicants printed a copy of the document associated with the PAIR entry for the
  undelivered mail, the first page of which is a copy of the envelope with no
  delivery address visible in the envelope window. (Exhibit C)
- 5.) The copy of the address sheet for the office action (Exhibit D), stamped with the date of return to the USPTO on November 17, 2008, does not reflect any creases from having been properly folded and placed in the envelope whereby the address would properly appear in the envelope address window.

### **USPTO PRACTICE**

MPEP Section 707.13 states the practice of the USPTO with respect to returned Office Actions

#### 707.13 Returned Office Action

Office actions are sometimes returned to the Office because the United States Postal Service has not been able to deliver them. <u>Upon receipt of</u> the returned Office action, the Technology Center (TC) technical support staff will check the application file record to ensure that the Office action was mailed to the correct correspondence address. If the Office action was not mailed to the correct correspondence address, it should be stamped "remailed" with the remailing date and mailed to the correct correspondence address. The period running against the application begins with the date of remailing. If the Office action was mailed to the correct correspondence address and it was addressed to an attorney or agent, a letter may be written to the inventor or assignee informing him or her of the returned action. The period running against the application begins with the date of remailing. Exparts Gourtoff, 1924 C.D. 153, 329 O.G. 536 (Comm'r Pat. 1924).

If the Office is not finally successful in delivering the letter, it is placed, with the envelope, in the file wrapper. For an Image File Wrapper (IFW), a copy of the letter\* and a copy of the envelope should be added to the IFW (see IFW Manual). If the period dating from the remailing elapses with no communication from applicant, the application is abandoned.

(emphasis added)

Furthermore, according to MPEP §711.03(c), ¶1.A.:

In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's

representative did not receive the original Notice of Allowance. <u>Under the reasoning of Delgar</u>, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the <u>Office action</u>. That is, the reasoning of *Delgar* is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action as documentary proof of nonreceipt of the Office action (emphasis added)

#### ARGUMENT

According to PAIR, the Non Final Office Action was returned to the USPTO as undelivered. Under USPTO practice, however, the correct correspondence address should be verified and the correspondence <u>remailed</u>. There is no record in PAIR of such remailing. Furthermore, the copy of the envelope in the Image File Wrapper (Exhibit C) does not show a delivery address visible in the envelope window, nor does the copy of the address sheet for the office action (Exhibit D), stamped with the date of return to the USPTO on March 2, 2007, reflect any creases from having been properly folded and placed in the envelope whereby the address would properly appear in the envelope address window. Therefore, it appears that the Non Final Office Action was not delivered to the Applicants because of a failure of the USPTO to properly mail, and remail, the correspondence to the Applicants.

Thus, the Applicants should not be required to file a Petition for Revival or pay the requisite fee. However, if the United States Patent and Trademark Office finds otherwise, please pay the proper fee from Deposit Account Number 501379.

Under the showing specified in MPEP §711.03(c), ¶1.A., the undersigned attests that:

- the Non Final Office Action dated November 7, 2008, was not received by the practitioner; and.
- a search of the file jacket and docket records indicates that the Office communication was not received.

Also, submitted herewith (Exhibit E) is a copy of Applicant's docket record, where the non-received Non Final Office Action would have been entered had it been received and docketed, showing the proper docketing of prior office actions ("Official Action").

#### RELIEF REQUESTED

The Applicants respectfully request that the Notice of Abandonment be withdrawn and the Non Final Office Action dated November 7, 2008, be properly remailed.

\* \* \*

#### DECLARATION

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

Sidney L. Weatherford Registration No. 45,602

Date: February 24, 2010

Ericsson Inc. 6300 Legacy Drive, M/S EVR 1-C-11

Plano, Texas 75024

(972) 583-8656 sidney.weatherford@ericsson.com

## EXHIBIT A



## United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCI United States Patent and Trademark Office Address COMMISSIONER FOR PATENTS

lexandria, Virginia 22313-1450

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
10/595,473	10/27/2006	Ralf Keller RECEIVED 🖘	P18906-US1	1188
27045 ERICSSON IN	7590 11/24/2009 NC:	RECEIVED 5	EXAM	INER
6300 LEGACY DRIVE		MGC 3 0 2003	COULTER, KENNETH R	
M/S EVR 1-C PLANO, TX 7		110 2000	ART UNIT	PAPER NUMBER
		EUS LEGAL DEPT.	2454	
			MAIL DATE	DELIVERY MODE
			11/24/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Notice of Abandonmen	t 10/595,473	KELLER ET AL.
	Kenneth R. Coulter	2454
- The MAILING DATE of this comm	nunication appears on the cover sheet with	the correspondence address-
This application is abandoned in view of:		
	eply to the Office letter mailed on <u>07 Novembe</u> a Certificate of Mailing or Transmission dated _ asion of time ofmonth(s)) which expired	), which is after the expiration of the
(b) A proposed reply was received on	, but it does not constitute a proper reply u	nder 37 CFR 1.113 (a) to the final rejection.
	o a final rejection consists only of: (1) a timely to (2) a timely filed Notice of Appeal (with appeal pliance with 37 CFR 1.114).	
	does not constitute a proper reply, or a bona fo nd 1.111. (See explanation in box 7 below).	de attempt at a proper reply, to the non-
(d) No reply has been received.		
2. Applicant's failure to timely pay the requir from the mailing date of the Notice of Allo (a) The issue fee and publication fee, if		Certificate of Mailing or Transmission dated
(b) The submitted fee of \$ is insufficed in the submitted in the submit	cient A halance of S is due	
	.18 is \$ The publication fee, if required	by 37 CER 1 18/d) in \$
(c) The issue fee and publication fee, if a		by 57 CFR 1.10(u), is \$
(o) El mo asse nos ena pasmostom nos; ir aj	pproduct, new not been received.	
<ol> <li>Applicant's failure to timely file corrected of Allowability (PTO-37).</li> </ol>		•
<ul> <li>(a) Proposed corrected drawings were re- after the expiration of the period for re-</li> </ul>	ceived on (with a Certificate of Mailing of ply.	or Transmission dated), which is
(b) No corrected drawings have been rec	eived.	
The letter of express abandonment which the applicants.	is signed by the attorney or agent of record, the	he assignee of the entire interest, or all of
The letter of express abandonment which 1.34(a)) upon the filing of a continuing application.		representative capacity under 37 CFR
The decision by the Board of Patent Appe of the decision has expired and there are	eals and Interference rendered on and be no allowed claims.	pecause the period for seeking court review
7. ☑ The reason(s) below:		
see attached interview summary		
	/Kenneth R Coulter/ Primary Examiner, A	
Petitions to revive under 37 CFR 1.137(a) or (b), or n minimize any negative effects on patent term.  US Patent and Tradomark Office	equests to withdraw the holding of abandonment un	der 37 CFR 1.181, should be promptly filed to
PTOL-1432 (Rev. 04-01)	Notice of Abandonment	Part of Paper No. 20091118

	Application No.	Applicant(s)	
Examiner-Initiated Interview Summary	10/595,473	KELLER ET AL.	
•	Examiner	Art Unit	
	Kenneth R. Coulter	2454	
All Participants:	Status of Application: aba	andoned	
(1) Kenneth R. Coulter.	(3)		
(2) Sidney Weatherford (Reg. No. 45,602).	(4)		
Date of Interview: 12 November 2009	Time: <u>9:51 am</u>		
Type of Interview:  ⊠ Telephonic  Ufdeo Conference Personal (Copy given to: ☐ Applicant ☐ Applic	cant's representative)		
Exhibit Shown or Demonstrated: Yes No If Yes, provide a brief description:			
Part I.			
Rejection(s) discussed: N/A			
Claims discussed: N/A			
Prior art documents discussed: N/A			
Part II.			
SUBSTANCE OF INTERVIEW DESCRIBING THE GENERAL See Continuation Sheet	ERAL NATURE OF WHAT WAS	S DISCUSSED:	
Part III.			
It is not necessary for applicant to provide a separate directly resulted in the allowance of the application. To of the interview in the Notice of Allowability.     It is not necessary for applicant to provide a separate did not result in resolution of all issues. A brief summa	he examiner will provide a written record of the substance of the	en summary of the substance interview, since the interview	
/Kenneth R Coulter/			
Primary Examiner, Art Unit 2454	Applicant/Applicant's Representat	tive Signature - if appropriate)	

Application No. 10/595,473

Continuation of Substance of Interview including description of the general nature of what was discussed: Examiner contacted Applicant's representative, Sidney Weatherford, to inquire about the status of the application since no reply to the non-final office action mailed 11/7/08 has been received. Applicant's representative indicated that the office action mailed 11/7/08 was never received. Since no response has been sent or received, the Application will be abandoned.

## **EXHIBIT B**

United States Patent and Trademark Office

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## **EXHIBIT C**

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Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450 If Undeliverable Return in Ten Days



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# EXHIBIT D



# UNITED STATES PATENT AND TRADEMARK OFFICE



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CATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
10/595,473	10/27/2006	Ralf Keller	P18906-US1	1188
27045 ERICSSON II	7590 11/07/2008 NC.		EXAM	INER
6300 LEGAC	Y DRIVE		TURNER,	ISHLEY D
M/S EVR 1-C PLANO, TX 7			ART UNIT	PAPER NUMBER
			2454	
			MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication. \_

## EXHIBIT E

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